

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: AVIATION

AGENDA DATE: FEBRUARY 14, 2012

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña/780-4724

DISTRICT(S) AFFECTED: 3

SUBJECT:

That the City Manager be authorized to sign a Lessor's Approval of Assignment of the Industrial Site Lease by and among the City of El Paso ("Lessor"), Bit-Tel Investments LLC ("Assignor") and Durham Properties, L.L.C. ("Assignee") for the following described property: Lot 1, Block 14, El Paso International Airport Tracts, Unit 11, El Paso County, Texas and municipally known and numbered as 1701 Hawkins Boulevard, El Paso, Texas.

BACKGROUND / DISCUSSION:

This property located at 1701 Hawkins Boulevard in the Southern Industrial Park is used as the FedEx Express Ship Center. The initial term of the lease is for forty years, terminating on April 30, 2040. There are 29 years two months remaining on the original lease with two – 5 year options. This lease generates annual revenue of \$66,621.38 on 235,245 square feet of land.

PRIOR COUNCIL ACTION:

Industrial Site Lease approved April 25, 2000, with FedEx Jones
Lessor's Approval of Assignment from FedEx Jones to Bit-Tel Investments approved July 24, 2001

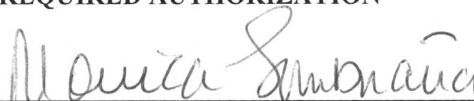
AMOUNT AND SOURCE OF FUNDING:

N/A. This is a revenue generating lease.

BOARD / COMMISSION ACTION: N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



Monica Lombraña, A.A.E.
Director of Aviation

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Lessor's Approval of Assignment of the Industrial Site Lease by and among the City of El Paso ("Lessor"), Bit-Tel Investments LLC ("Assignor") and Durham Properties, L.L.C. ("Assignee") for the following described property:

Lot 1, Block 14, El Paso International Airport Tracts, Unit 11, El Paso County, Texas and municipally known and numbered as 1701 Hawkins Boulevard, El Paso, Texas.

ADOPTED this the ____ day of _____ 2012.


THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

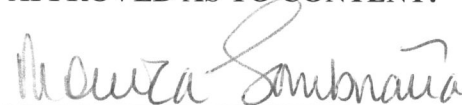
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A.A.E.
Director of Aviation

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

LESSOR'S APPROVAL OF ASSIGNMENT

WHEREAS, the City of El Paso ("Lessor") entered into an Industrial Site Lease effective May 1, 2000 ("Lease") between the Lessor and FedJones El Paso, L.L.C. for the following described property:

Lot 1, Block 14, El Paso International Airport Tracts, Unit 11, El Paso County, Texas and municipally known and numbered as 1701 Hawkins Boulevard, El Paso, Texas. ("Property")

WHEREAS, on July 24, 2001, Lessor approved the assignment of the Lease to Bit-Tel Investment LLC ("Assignor") by that Lessor's Approval of Assignment effective August 1, 2001; and

WHEREAS, Assignor desires to execute a Lessor's Approval of Assignment with Durham Properties, L.L.C., wherein Assignor will agree to assign to Durham Properties, L.L.C. and Durham Properties, L.L.C. will agree to assume Assignor's obligations under the Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to Durham Properties, L.L.C., a Texas Limited Liability Company ("Assignee"), on the condition that Assignee assumes and becomes liable to pay any and all sums owing or becoming due Lessor under terms of the Lease from and after the effective date of the assignment of the Lease to Assignee, and upon the further condition that Assignee agrees to accept and abide by all the terms, covenants, and conditions of the Lease.
2. **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee has provided a certificate of insurance to evidence compliance with the insurance requirements of the Lease and expressly agrees to be bound by the indemnification provisions contained in the Lease.
3. **GUARANTOR.** Assignee shall, as of the effective date of the assignment, enjoy all rights and privileges and be responsible for satisfying all such obligations the same as if the Lease had originally been executed between Lessor and Assignee. Provided, however, Assignee shall tender to Lessor an irrevocable letter of credit, or other surety acceptable to the Director of Aviation ("Security Deposit") in an amount equal to three (3) months of Rental to guarantee the faithful performance of Lessee of its obligations under this Lease and the payment of all Rental due hereunder. Assignee shall be obligated to maintain such Security Deposit in effect until the expiration of eighteen (18) consecutive months from the Effective Date of this Lessor's approval of Assignment. Within twenty (20) days after expiration of such eighteen (18) month period and if no

Event of Default by Assignee has occurred, Lessor will return the Security Deposit to Assignee.

4. **RATIFICATION OF LEASE.** Except as expressly modified herein, no provision of this consent alters or modifies any of the terms and conditions of the Lease; all other terms and conditions of the Lease shall remain in full force and effect.
5. **ADDRESS FOR NOTICE.** Notices to Assignor and Assignee shall be sufficient if sent by certified mail, postage prepaid, addressed to:

ASSIGNOR: Bit-Tel Investments, LLC
Attn. Robert Gold, Manager
15400 W. 64th Ave., Suite 9E PMB 65
Arvada, Colorado 8007

Bit-Tel Investment LLC
Attn. Walter Galizki, Manager
3460 N. Mission Road W
Bremerton, Washington 98312

ASSIGNEE: Durham Properties, L.L.C.
1326 Regency Ct
Southlake, Texas 76092-9515
Attn: Philip R. Wood

6. **AUTHORIZED REPRESENTATIVE.** The persons signing this Lessor's Approval of Assignment on behalf of the Assignee and Assignor represent and warrant that they have the authority legally to bind the Assignee and Assignor, respectively, to the provisions of this Lessor's Approval of Assignment.
7. **NON-WAIVER.** This Lessor's Approval of Assignment hereby given by Lessor shall not end the need for Lessor's consent for any future assignments.
8. **EFFECTIVE DATE.** The parties have executed this Lessor's Approval of Assignment hereto this 14th day of February 2012.


[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

ADOPTED this _____ day of _____, 2012.

LESSOR: CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:


Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña
Monica Lombraña, A.A.E.
Director of Aviation

LESSOR'S ACKNOWLEDGEMENT

THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2012,
by **Joyce A. Wilson** as **City Manager** of the **City of El Paso, Texas**. (Lessor)

My Commission Expires:

Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

An Oregon limited liability company

Robert J. Gold, Manager

Walter S. Galitzki, Manager

A circular notary seal for Robert B. Griss, a Notary Public in the State of Colorado. The seal features the text "ROBERT B. GRISS" at the top, "NOTARY PUBLIC" in the center, and "STATE OF COLORADO" at the bottom, all enclosed within a double-lined circular border.

COUNTY OF JEFFERSON)

My Commission Expires: 6/21/12

Notary Public, State of Colorado

COUNTY OF KITSAP)

My Commission Expires:

Notary Public, State of

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ASSIGNOR: Bit-Tel Investments, LLC
An Oregon limited liability company

By: _____
Robert J. Gold, Manager

By: Walter S. Galitzki
Walter S. Galitzki, Manager

ASSIGNOR'S ACKNOWLEDGEMENT

THE STATE OF COLORADO)
)
COUNTY OF JEFFERSON)

This instrument was acknowledged before me on this ____ day of _____, 2012, by Robert J. Gold, Manager, of Bit-Tel Investment LLC, an Oregon limited liability company (Assignor).

My Commission Expires: _____

Notary Public, State of _____

ASSIGNOR'S ACKNOWLEDGEMENT

THE STATE OF WASHINGTON)
)
COUNTY OF KITSAP)

This instrument was acknowledged before me on this 24th day of January, 2012, by, by Walter S. Galitzki, Manager, of Bit-Tel Investment LLC, an Oregon limited liability company (Assignor).

My Commission Expires: _____

09-11-12

Donna L Stromberg
Notary Public, State of Washington

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]



ASSIGNEE:
DURHAM PROPERTIES, L.L.C.

Philip R Wood
Printed Name: Philip R. Wood
Title: MANAGER

ASSIGNEE'S ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF TARRANT)

This instrument was acknowledged before me on this 24th day of January
2012, by Philip R Wood as Manager of Durham
Properties, L.L.C. (Assignee)

Ruby F Simmons
Notary Public, State of Texas

My Commission Expires:
April 25, 2015

